

Appln No. 09/963,872

Amdt date November 26, 2003

Reply to Office action of August 27, 2003

REMARKS/ARGUMENTS

Claims 1 to 9, 11 to 19, 21 to 27 and 29 remain in this application. Independent claims 1, 12 and 22 have been amended to include the limitations of cancelled claims 10, 20, and 28, respectively.

In the Office action dated August 27, 2003, the examiner rejected claims 1 to 29 under 35 U.S.C. § 103(a) as unpatentable over the admitted state of the art in combination with Dahn et al. The claims were also provisionally rejected under the judicially created doctrine of obviousness-type double patenting based on claims 11-24 of co-pending Application No. 09/897,445 in view of Yahagi et al.

In a telephone interview between the examiner and Kathleen Olster, one of applicant's attorneys of record, the examiner agreed to withdraw the Section 103(a) rejection, but maintained the double patenting rejection. While applicants thank the examiner for the courtesy of the interview, applicants maintain that the double patenting rejection is improper. In particular, applicants wish to point out the differences between the steps of "drying" and "heat-treating."

First of all, for this technology, the mere step of "drying" is afforded its usual definition, and refers to a step by which moisture is driven off without causing any chemical reaction. In contrast, as stated in the specification at page

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8, lines 10 to 12, a "heat-treatment" step involves a chemical reaction: "During the heat-treatment process, the coated material is changed into an oxide to form an oxide layer (surface-treatment layer) on the lithiated compound."

Consequently, the recitation of a "drying" step as set forth in certain claims of the co-pending application does not render a "heat-treatment" step obvious.

Furthermore, for this technology, drying is generally done at low temperatures, usually below 100°C. In contrast, "heat-treating" as set forth in the specification, is generally done at higher temperatures, usually above 100°C. To clarify the temperatures involved in the heat-treatment step, the independent claims 1, 12 and 22 have been amended to include that the heat-treatment occurs "at a temperature between about 100°C to about 1000°C." In amending the independent claims, the corresponding dependent claims which included this same temperature limitation have been cancelled. Such limitations are neither taught nor suggested by the drying step set forth in the claims of the co-pending application.

With this amendment, applicants submit an Information Disclosure Statement, FORM PTO/SB/08A/B, and copies of the cited references. Applicants request that the references be considered, and that the examiner return an initialed copy of the FORM PTO/SB/08A/B with the next action.

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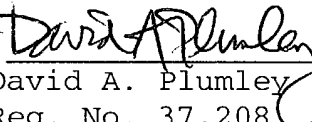
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Finally, upon reviewing the file, applicants note that the priority documents submitted with the application as filed on September 25, 2001 have never been acknowledged. Applicants request that the priority documents be acknowledged in the next action.

Claims 1 to 9, 11 to 19, 21 to 27 and 29 remain in this application. Based on the above remarks, applicants submit that the claims are in condition for allowance and favorable action is requested. However, if there are any remaining issues that can best be addressed by telephone, the examiner is asked to contact applicants' attorney at the number below.

Respectfully submitted,
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